

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 25, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Linda Holden (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 290 - 1-18-01**
HB 286 - 1-18-01
Executive Action: **HB 224 - DPAA - 18-1**

HB 276 - DP - 16-2

HB 238 - DPAA - 19-0

HEARING ON HB 290

An Act including concealment or surprise in the definition of "force" in the context of sexual intercourse without consent.

Sponsor: Rep. Butch Waddill, HD 62, Florence, **EXHIBIT**(juh20a01)
EXHIBIT(juh20a02)

Proponents: Julie Millam, Executive Director, Christian Coalition, Montana

Kelly Cogley, 3rd year law student, University of Montana, School of Law; Women's Law Caucus

Kimberley Dubek, University of Montana, School of Law; Women's Law Caucus.

Brenda Wahler, 2nd year law student, University of Montana, School of Law; Women's Law Caucus.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 20.4}

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Eggers, Peterson, Noennig to Ms. Cogley for clarification

{Tape : 1; Side : A; Approx. Time Counter : 20.4 - 29.5}

{Tape: 1; Side : B; Approx. Time Counter : 0.1 - 13.7}

Proponents: Because of adverse weather conditions these proponents arrived late and were allowed to testify.

Kirsten LaCroix, Prosecutor, Missoula

Rich Ochsner, Detective, City Police, Missoula

Dallas Erickson, Montana Citizens for Decency Through Law. **EXHIBIT**(juh20a03)

Harris Himes, Attorney, Hamilton

Questions by the Committee: Reps. Clancy, Harris, Adams to Ms. LaCroix and Mr. Ochsner

{Tape : 1; Side : B; Approx. Time Counter : 17.7 - 29.1}

Closing by Sponsor: Rep. Waddill closed the Hearing on HB 290 saying he was very concerned about plugging the hole in this law to stop the exploitation of women.

HEARING ON HB 286

An Act establishing the right of crime victims to attend criminal proceedings.

Sponsor: Rep. Bill Thomas, HD 93, Central Montana, Hobson said whether constitutionally, statutorily or both, victims are given a right to be present at a trial in the majority of the states in this nation. Montana has provided important rights for victims of crime and has been a leader in many ways. Yet it has not addressed the crucial issue of providing for the need this legislation seeks, which is the right to be present throughout trial, not to be excluded merely because the victim or a family member is called to testify.

Proponents: Carol Smith, Lewistown

Deb Bakke, Friendship Center, Victim/Witness Program

Jon Parker, Victim Advocate, Lewistown

EXHIBIT (juh20a04)

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 17.8}

Opponents: None

Questions from Committee Members and Responses: Reps. Adams, Harris, Eggers, Noennig, Newman to Mr. Parker for clarification.

{Tape : 2; Side : A; Approx. Time Counter : 17.8 - 29.8}

Closing by Sponsor: Rep. Thomas closed the Hearing on HB 286 by saying there are two issues here. The first is whether what is being proposed is a basic right that should be afforded to victims and their family members and secondly, whether a defendant's right to a fair trial is compromised in any way as a result of this legislation. On the first, it is an inherent right to attend all proceedings of a trial without undue limitation and on the second, as case law indicates, there is no undoing of the fundamental rights that must be enforced.

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 8.8}

EXECUTIVE ACTION ON HB 224

Motion: REP. HURDLE moved that HB 224 DO PASS. #1
EXHIBIT (juh20a05)

Motion: REP. HURDLE moved that HB 224 BE AMENDED. #2
EXHIBIT (juh20a06)

Discussion: Reps. Hurdle, Shockley, Clancy, Noennig, Mangan, Mr. MacMaster.

Vote: The Hurdle amendment #2 carried unanimously. 19-0

Motion: REP. LASZLOFFY moved that HB 224 BE AMENDED. #3
EXHIBIT (juh20a07)

{Tape : 2; Side : B; Approx. Time Counter : 8.8 - 29.1}

Discussion: Rep. Laszloffy, Mr. MacMaster, Reps. Clancy, Mangan, Gallus, Hurdle.

Motion: REP. YOUNKIN moved a substitute motion that HB 224 BE AMENDED to move amendments 4,5,7. #4

Rep. Laszloffy withdrew his motion.

Discussion: Reps. Gutsche, Mangan, Mr. MacMaster, Clark, Gallus.

Vote: Younkin substitute amendment carried 19-0.

Motion: REP. LASZLOFFY moved that HB 224 BE AMENDED by moving 1 and 2. #5

Discussion: Reps. Younkin, Harris, Gallus, Mr. MacMaster, Mr. Dave Ohler, Department of Corrections (without objection) Reps. Laszloffy, Noennig, Mangan, Newman, Hurdle, Gallus, Shockley.

Vote: Motion #5, moving amendments 1 and 2 carried 10-9 with Reps. Clark, Clancy, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan and Newman voting no.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 29.2}
{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 3.9}

Discussion: Mr. MacMaster told the committee that sometimes when they amend a Bill, they change the body of the Bill so that the Title no longer reflects what's in the Bill. The Title is wrong

now. When the committee amends a Bill by an oral amendment, normally they ignore the Title. He, as a matter of course, then amends the Title. His point is, when you have amendments in Committee, especially typed ones with Title changes, you do not have to discuss or consider any amendment that is to the Title. The Title is not the law.

{Tape : 3; Side : B; Approx. Time Counter : 3.9 - 8.7}

Discussion: Reps. Clark.

Motion/Vote: REP. MANGAN moved that HB 224 DO PASS AS AMENDED. #6
Motion carried 18-1 with Rep. Curtiss voting no.

EXECUTIVE ACTION ON HB 89

Motion: REP. NOENNIG moved that HB 89 DO PASS. #7

Motion: REP. NOENNIG moved that HB 89 BE AMENDED 02. #8

Discussion: Rep. Noennig.

Vote: Noennig amendment 02 passed 11-8 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan and Newman voting no.

Motion: REP. NOENNIG moved that HB 89 BE AMENDED 03. #9

Discussion: Rep. Noennig, Newman.

Vote: Noennig amendment 03 passed 16-3 with Reps. Gutsche, Hurdle and Mangan voting no.

Motion: REP. YOUNKIN moved that HB 89 DO PASS AS AMENDED. #10

Discussion: Reps. Mangan, Newman, Clark, Harris, Laszloffy, Peterson, Noennig, Thomas, Gallus, Shockley.

{Tape : 3; Side : B; Approx. Time Counter : 8.7 - 29.1}

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 4.9}

Vote: Motion #10 failed unanimously 0-19

Motion/Vote: REP. NOENNIG moved that HB 89 BE TABLED. #11
Motion carried 16-3 with Reps. Hurdle, Newman and Younkin voting no.

EXECUTIVE ACTION ON HB 171

Motion: REP. NEWMAN moved that HB 171 DO PASS. #12 (Postponed after discussion).

Discussion: Reps. Younkin, Newman, Shockley, Eggers.

Motion/Vote: REP. NEWMAN moved that HB 168 BE TAKEN OFF THE TABLE. #13 Motion failed 8-12 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Holden, Noennig, Peterson, Rice, Thomas, Wolery and Younkin voting no.

EXECUTIVE ACTION ON HB 238

Motion: REP. THOMAS moved that HB 238 DO PASS. #14

Discussion: Rep. Newman explained amendment EXHIBIT(juh20a08)

Motion/Vote: REP. NEWMAN moved that HB 238 BE AMENDED. #15 Motion carried unanimously 20-0.

Motion/Vote: REP. YOUNKIN moved that HB 238 DO PASS AS AMENDED. #16. Motion carried unanimously 20-0.

EXECUTIVE ACTION ON HB 252

Motion: REP. PETERSON moved that HB 252 DO PASS. #17

Discussion: Reps. Eggers, Shockley, Peterson.

Vote: Motion failed 3-15.

Motion/Vote: REP. NOENNIG moved that HB 252 BE TABLED. #18 Motion carried 15-3 with Reps. Hurdle, Mangan and Newman voting no.

{Tape : 4; Side : A; Approx. Time Counter : 16 - 27.6}

Discussion: Reps. Peterson, Shockley, Mr. MacMaster concerning Tabled motions.

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 1.4}

EXECUTIVE ACTION ON HB 229

Motion: REP. PETERSON moved that HB 229 DO PASS. #19 Rep. Peterson withdrew his motion.

Discussion: Reps. Noennig, Shockley.

EXECUTIVE ACTION ON HB 276

Motion: REP. PETERSON moved that HB 276 DO PASS. #20

Discussion: Reps. Gallus, Peterson, Noennig, Newman, Mangan.

Motion/Vote: REP. GALLUS moved that HB 276 BE AMENDED. #21 Motion failed 6-11 with Reps. Laszloffy, Clark, Curtiss, Eggers, Gutsche, Harris, Mangan, Newman, Noennig, Peterson, Younkin voting no.

Vote: Motion #20 carried 16-2 with Reps. Shockley and Adams voting no.

{Tape : 4; Side : B; Approx. Time Counter : 0.8 - 21.1}

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (*juh20aad*)